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June 8, 2023

Hon. Valerie Figueredo
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 17A
New York, New York 10007

SO ORDERED



VALERIE FIGUEREDO

United States Magistrate Judge

Dated: June 8, 2023

Defendant B&H Foto Electronics Corp. is ordered to produce all responsive, non-privileged results of its ESI review by no later than 6:00 p.m. on June 16, 2023. Given that the deadline for fact discovery is not until July 26, 2023, the parties have ample time to reschedule Mr. Daskal's deposition. Plaintiffs' motion to compel is denied and the Clerk of Court is directed to terminate the motion at ECF No. 331.

Re: Pierre v. City of New York, et al.
Index No. 1:20-cv-05116-ALC-VF

Dear Judge Figueredo:

We represent Defendant B&H Foto Electronics Corp. ("B&H") in the above-referenced matter. We write pursuant to Your Honor's Order dated June 7, 2023 (Dkt. 333) and in response to Plaintiffs' letter motion dated June 7, 2023 (Dkt. 331).

Plaintiffs clearly misunderstand the timeline of events, as they seem to believe that B&H had already completed its review of the ESI results from the unrestricted email searches. However, the "2,700 pages of records" referenced by Plaintiffs were an estimate of the documents identified by B&H after it met and conferred with Plaintiff's counsel and conducted a broader second search after initial search terms did not reveal documents. Since the identification of that universe of ESI, B&H and undersigned counsel have worked diligently to: (1) collect that ESI; (2) retain a vendor to store the ESI; (3) review the ESI for privilege and confidential information which would require redaction; and ultimately (4) bates stamp and produce of the ESI. As of the writing of this letter, B&H and counsel have completed the first two steps described above, and have completed approximately one third of the review of these documents. However, in order to produce these documents, even on a rolling basis, redactions will need to be made and the documents must be stamped and finalized for production. The vendor counsel is working with has advised us that this process takes approximately one day per production. Thus, rather than make several small productions, which will require a longer wait time, we advised Plaintiffs' counsel today that we aimed to get the full production to them by the middle of next week. To the extent we previously stated we would seek to provide on a rolling basis, we did not have a full understanding of system limitations.

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In recognition of the 30(b)(6) deposition of Elimelech Daskal currently scheduled for Wednesday, June 14, we offered to reschedule Mr. Daskal's deposition for a time at least a week after the production is made. Currently, depositions are due to be completed by July 26, 2023. Plaintiffs' counsel has offered no explanation for why Plaintiffs cannot reschedule Mr. Daskal's deposition for a week or so later in order to ensure they have received and had an opportunity to review any production prior to disclosure. Instead, when we offered this option to Plaintiffs' counsel, Plaintiffs' counsel simply responded: "We will not be delaying Daskal's deposition." Plaintiffs offer no explanation for their inflexibility, which would not require any extension at all of the Court's deposition deadline, which extends for six weeks beyond the currently scheduled date of Mr. Daskal's deposition. The only apparent explanation for Plaintiffs' unnecessarily adversarial approach to this non-issue is to threaten B&H with recalling Mr. Daskal for a second deposition.

In any event, B&H expects to complete its ESI review by Wednesday, June 14, and will produce all responsive, non-privileged results no later than 6 PM on Friday, June 16, while striving for production on June 15th. B&H reiterates it is more than happy to reschedule Mr. Daskal's deposition to a mutually convenient date thereafter, and certainly well in advance of the Court's July 26 deadline.

We thank the Court for its attention to this matter.

Respectfully,

JACKSON LEWIS P.C.

Richard I. Greenberg

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